

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA	:	DATE FILED:
v.	:	CRIMINAL NO.
WILLIAM A. BAILEY, JR.	:	VIOLATIONS: 18 U.S.C.
	:	§§ 1030(a)(2)(C),(b) and(c)(2)(B)
	:	(intentionally accessing and attempting to
	:	access a protected computer without
	:	authorization and obtaining information
	:	for purpose of commercial advantage and
	:	private gain - 11 counts)

INDICTMENT

COUNTS ONE THROUGH ELEVEN

THE GRAND JURY CHARGES THAT:

INTRODUCTION

At all times material to this indictment:

1. Defendant WILLIAM A. BAILEY, JR., lived in Charlotte, North Carolina and operated businesses that sold databases of information about physicians, dentists, chiropractors, and lawyers to persons interested in marketing to people in those professions. Defendant's businesses were named DR 411.com, LLC, Zichron Health and Wellness, LLC, Zichron Internet Marketing, LLC, and Zichron Intellectual Properties, LLC.
2. Defendant WILLIAM A. BAILEY, JR., operated a website named, www.dr-411.com.

3. The American College of Physicians (hereafter “ACP”) is a membership organization for doctors of internal medicine throughout the world. It is located at 190 N. Independence Mall West, Philadelphia, PA 19106-1572.

4. ACP maintains a database of its members, called “Member Connection.” That database is available only to members over the Internet through its website and requires the use of a user name and password to gain access.

5. The ACP website contained the following restriction on its use. A viewer had to read this warning before getting access to the membership database:

“Member Connection” or any of its data or listings may not be downloaded, republished, resold or duplicated, in whole or in part, for commercial or any other purposes, or for purposes of compiling mailing lists or any other lists of physicians. The use of “Member Connection” to establish independent data files or compendiums of statistical information is prohibited.

...

Should the foregoing terms and conditions be acceptable to you, please indicate your agreement and acceptance by clicking below on the button labeled, “I accept.”

Immediately below that paragraph was a “button” that a viewer could click on. On the button appeared the words, “I accept.”

6. On or about February 4, 2005, the notice was amended to insert the following paragraph:

This directory is for the sole use of ACP members. Any unauthorized use, misuse or reproduction of the data contained within this web site is strictly prohibited. Misuse includes, but is not limited to (a) the use of any type of automated means to access the directory or download or retrieve directory listings or other information; (b) any use of the data contained within this web site for unlawful purposes; or (c) any reproduction, transmission, sale, distribution or commercial exploitation of the data contained in this web site. Access to the directory is monitored for security purposes.

In addition, the text on the button that the viewer had to click on to gain access to the directory was changed to read, "I agree."

7. Defendant WILLIAM A. BAILEY, JR., never was a member of ACP and had no authority to access its databases or to download any information from them.

Defendant'S ACCESS TO THE ACP WEBSITE

8. Between on or about January 24, 2005, and on or about May 31, 2005, defendant WILLIAM A. BAILEY, JR., gained unauthorized access to the membership database of ACP, using accounts of legitimate members and downloaded information about members that was stored in the database.

9. Between on or about January 24, 2005 and on or about May 31, 2005, defendant WILLIAM A. BAILEY, JR., downloaded information relating to more than 80,000 members of ACP.

10. Between on or about each of the dates and times listed below (each pair of dates and times constituting a separate count of this indictment), in Philadelphia, in the Eastern District of Pennsylvania and elsewhere, defendant

WILLIAM A. BAILEY, JR.,

intentionally accessed without authorization, attempted to access without authorization, exceeded authorized access to, and attempted to exceed authorized access to, the computer of the American College of Physicians, a protected computer within the meaning of Title 18, United States Code, Section 1030(e)(2), and thereby obtained information, and attempted to obtain information, from the computer of the American College of Physicians by means of interstate and foreign communications:

<u>COUNT</u>	<u>DATE</u>
1	from January 24, 2005 at approximately 9:59 AM until approximately 10:11 AM
2	from January 24, 2005 at approximately 10:48 AM until approximately 10:54 AM
3	from January 24, 2005 at approximately 4:14 PM until approximately 4:56 PM
4	from January 24, 2005 at approximately 9:20 PM until January 26, 2005 at approximately 10:30 AM
5	from January 26, 2005 at approximately 6:08 PM until January 27, 2005 at approximately 9:27 AM
6	from January 27, 2005 from approximately 6:27 PM until approximately 11:15 PM
7	from January 28, 2005 from approximately 4:36 PM until approximately 10:45 PM
8	from May 17, 2005 from approximately 9:50 PM until approximately 11:10 PM.
9	from May 29, 2005 from approximately 10:30 PM until approximately 11:11 PM
10	from May 30, 2005 from approximately 8:11 AM until approximately 8:13 AM
11	from May 31, 2005 from approximately 5:55 PM until approximately 8:27 PM

11. At all times, defendant WILLIAM A. BAILEY, JR, committed these acts for a commercial advantage and for private financial gain.

All in violation of Title 18, United States Code, Sections 1030(a)(2)(C), (b), and (c)(2)(B).

A TRUE BILL:

FOREPERSON

PATRICK L. MEEHAN
United States Attorney